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6 Attorneys for Ahmed Said,
sued herein as Defendant
7 TENDERLOIN GROCERY

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 LORILLARD TOBACCO COMPANY, a
Delaware corporation,

Case No. C 05 – 3123 CW

12 Plaintiff,

**ANSWER TO FIRST AMENDED
COMPLAINT AND DEMAND FOR JURY
TRIAL**

13 v.
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15 TENDERLOIN GROCERY, a business
entity; AHMED SAID, an individual; and
DOES 1 – 10 inclusive,

16 Defendants.
17 _____/

18 Defendants TENDERLOIN GROCERY, a business entity and AHMED SAID, an individual
19 doing business at Tenderloin Grocery, (“Defendants”), hereby answer the First Amended Complaint
20 For Damages and Injunctive Relief (“FAC”) filed herein by Lorillard Tobacco Company (“Plaintiff”)
21 as follows:

22 1. Defendants lack sufficient information and belief to answer the allegations contained in
23 paragraphs 1, 2, 4, 5, 9, 10, 11, and 18, of the FAC, and on that ground, Defendants deny each and
24 every allegation contained in each such paragraph of the FAC in their entirety.

25 2. Defendants deny the allegations of paragraphs 6, 7, 8, and paragraphs 12 through 48,
26 inclusive, of the FAC in their entirety.
27

1 such damages were legally caused by the acts, negligence and omissions of Plaintiff and not by any
2 legally cognizable acts or omissions on the part of Defendants. Plaintiff's claims should be barred
3 and Plaintiff should take nothing by virtue of this action as a legal result of the acts, negligence and
4 omissions of Plaintiff.

5 FIFTH AFFIRMATIVE DEFENSE

6 8. As and for a fifth and separate affirmative defense, Plaintiff's claims against
7 Defendants are barred by virtue of Plaintiff's failure to mitigate and minimize the alleged damages
8 which Plaintiff claims it suffered in this case.

9 SIXTH AFFIRMATIVE DEFENSE

10 9. As and for a sixth and separate affirmative defense, Plaintiff's claims against
11 Defendant are barred by the doctrine of comparative negligence. Plaintiff's damages, if any,
12 should be apportioned among all parties, including Plaintiff, in proportion to such parties'
13 respective fault.

14 SEVENTH AFFIRMATIVE DEFENSE

15 10. As and for a seventh and separate affirmative defense, Plaintiff's claims against
16 Defendant are barred by the doctrine of assumption of risk. Plaintiff's negligence, carelessness,
17 assumption of risk and other conduct were the superseding legal causes of any alleged damages
18 Plaintiff has suffered.

19 EIGHTH AFFIRMATIVE DEFENSE

20 11. As and for a eighth and separate affirmative defense, all Plaintiff's claims for
21 injunctive relief should be barred as Plaintiff is unable that Defendants caused Plaintiff any injury
22 or damage, that Plaintiff has been irreparably damaged and or that Plaintiff is entitled to injunctive
23 relief pursuant to prevailing law or statute.

24 NINTH AFFIRMATIVE DEFENSE

25 12. As and for a ninth and separate affirmative defense, Defendants request this Court to
26 enter a judgment in Defendants' favor awarding them affirmative relief, damages, attorneys fees,
27 costs, and or exemplary damages under each statutory scheme, (whether state or federal), pursuant

1 to which Plaintiff brings the within action and or any part thereof.

2 WHEREFORE, Defendants pray for entry of judgment in their favor and against Plaintiff as
3 follows:

4 13. That Judgment be entered in favor of Defendants and against Plaintiff;

5 14. That Plaintiff take nothing by Plaintiff's action herein;

6 15. That Defendants recover judgment against Plaintiff by virtue of their Counter
7 Claims filed herein;

8 16. That Defendants be awarded all of their attorneys fees and costs incurred in this
9 action pursuant to relevant provisions of the law;

10 17. That Defendants be awarded all of their attorneys fees and costs incurred in this
11 action pursuant to relevant provisions of the law and in accordance to proof;

12 18. That Defendants be awarded such other and further relief as is just and proper.

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14 Dated: September 21, 2005

MICHAEL BLUMENFELD
A Professional Corporation

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16 /s/

17 By: Michael J. Blumenfeld
18 Attorneys for Defendants
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